

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

### **I. DISPUTE**

1. a. Whether there should be additional reimbursement for date of service 09/04/01?  
b. The request was received on 05/06/02.

### **II. EXHIBITS**

1. Requestor, Exhibit 1:
  - a. Initial TWCC 60 and letter requesting dispute resolution
    1. EOBs
    2. UB-92
    3. Medical Records
  - b. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II
  - a. Initial Response to Request for dispute resolution
  - b. TWCC 60
  - c. SOAH decisions
  - d. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 06/20/02. Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on 06/21/02. The response from the insurance carrier was received in the Division on 07/03/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Additional Documentation is reflected as Exhibit #3 of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor:  
No position statement but the disputed services table indicates, "paid below cost/local u/c."
2. Respondent: Letter dated 07/03/02  
"...Provider has furnished no evidence to show that the amount of reimbursement it seeks is consistent with the statutory mandate to achieve effective medical cost control, or that the amount does not exceed the fee charged for similar treatment of an individual of an

equivalent standard of living and paid by someone acting on that individual's behalf, or that the amount is based, in part, on the increased security of payment afforded by the Act.”

#### **IV. FINDINGS**

1. Based on Commission Rule 133.307 (d)(1&2), the only date of service (DOS) eligible for review is 09/04/01.
2. The amount in dispute is \$1,628.00 per the disputed tables chart.
3. The carrier disputed the reimbursement request based on a fair and reasonable denial.

#### **V. RATIONALE**

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011 (d) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

Rule 133.307 (g) (3) (D) places certain requirements on the provider when supplying documentation with the request for dispute resolution. The provider is to discuss, demonstrate, and justify that the payment amount being sought is fair and reasonable. Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. Regardless of the carrier's methodology or lack thereof, or a timely or untimely response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable.

The provider has submitted EOBs from other carriers as examples of “fair and reasonable” reimbursement for same or similar services. These EOBs were paid at different percentages of the billed amount. The willingness of some carriers to provide reimbursement at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011 (d) of the Texas Labor Code. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 26<sup>th</sup> day of August 2002.

Carolyn Ollar, RN, BA  
Medical Dispute Resolution Officer  
Medical Review Division

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.